IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.156 OF 2007

IN

S.C.SUIT (ST.) NO.465 OF 2007

WITH

CIVIL APPLICATION NO.229 OF 2007

Jeevanshila Co-operative Housing
Society Ltd. ...Appellant

Versus

K.N.Katakdhond & Anr. ...Respondents

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Mr.P.G.Lad i/b Mrs.Aparna Murlidharan for Appellant.

Mrs.Geeta Mulekar, A..G.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 1, 2007.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mrs.Mulekar, A.G.P. waives notice for the Respondents.

3. As short question is involved, Appeal is

taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the Trial Court dated 6th February 2007 in S.C. Suit (St.) No.465 of 2007. The Appellant is aggrieved by the order declining to consider the request of the Appellant for grant of ad-interim relief on the sole reasoning that the Appellant has not given notice under Section 80 of the Code of Civil Procedure to the State. It would have been a different matter if the Court were to refuse to grant leave to institute the Suit for want of notice under Section 80 of the Code of Civil Procedure. However, by the same order, the Trial Court has granted leave to the Appellant/Plaintiff to institute the suit and exempt the Plaintiff from giving notice under Section 80 of the Code of Civil Procedure. Having done so, it is manifest error committed by the Trial Court in not hearing the Appellant/Plaintiff on the prayer for grant of ad-interim relief invoking the reason of non serving of notice under Section 80 of the Code of Civil Procedure. This approach cannot be countenanced.

5. Accordingly, the order passed by the Trial Court refusing to grant ad-interim relief is set-aside. Instead, the parties are relegated before the Trial Court, who in turn will reconsider the prayer for grant of ad-interim relief.

6. To facilitate the Appellant to move the Trial Court, parties are directed to maintain status-quo with regard to the suit property for a period of one week from today.

7. All questions on the point of ad-interim relief are left open, to be considered by the Trial Court on its own merits, uninfluenced by any observation made in the impugned order or for that matter the present order.

8. Appeal and the companion Civil Application stand disposed of accordingly.

A.M.KHANWILKAR, J.